SUPREME COURT, U. S.

JAN 14 1974

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-638

LEO JONES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FIRST DISTRICT, STATE OF FLORIDA

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BRIEF OF RESPONDENT

OPINION BELOW

On April 17, 1973, the District Court of Appeal of Florida, First District, filed its opinion in Jones v. State, Case Number Q-350. Petitioner Jones filed a Petition for Rehearing, which was denied on May 17, 1973. The opinion of the District Court of Appeal of Florida, First District, is reported at 276 So.2d 550. Petitioner Jones filed a Petition for Writ of Certiorari in the Supreme

Court of Florida, which was denied on July 13, 1973. The denial of certiorari is styled Jones v. State, Case Number 43,881, and is reported at 280 So.2d 689.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. Section 1257, which, as pertinent herein, provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> "(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specifically set up or claimed under the Constitution, treaties

or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

QUESTION PRESENTED

WHETHER THE PETITIONER'S ARREST AND THE SUBSEQUENT DISCOVERY OF A MATCHBOX OF HEROIN VIOLATED HIS RIGHT TO BE FREE FROM AN UNREASONABLE SEARCH AND SEIZURE UNDER THE FOURTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES?

ARGUMENT

A reading of the petitioner's Appendix, pages 4a through 19a will reveal the following facts which were presented to the state trial court at the hearing held on petitioner's Motion to Suppress Evidence, and which were reviewed by the District Court of Appeal of Florida, First District.

Officers Stelma and Waxer of the Duval County Sheriff's Office were on patrol duty together on November 17, 1971. Their second call on November 17, 1971, was to investigate a burglary of the Seaside Poultry Company. The investigation disclosed that a large number of shrimp was missing.

At approximately 1:15 p.m. on November 17, 1971, Stelma and Waxer, while on patrol, encountered a Dodge convertible with three occupants. The Dodge convertible was traveling at a high rate of speed, and the officers began pursuing the vehicle. With lights and siren operative, the Dodge was pursued at speeds up to eighty and eighty-five miles per hour.

Eventually, the Dodge vehicle came to a complete stop. The driver of the vehicle was arrested for attempting to elude police officers, excessive speed (up to eighty-

five miles per hour in a thirty miles per hour zone), reckless driving, and operating a motor vehicle without a driver's license. The officers tried to get a trace-down on the vehicle tag number, via NCIC and FCIC, to see if the Dodge had been stolen, and also requested the services of a wrecker.

Officers Ritchey and Warden arrived at the scene to assist Stelma and Waxer. The petitioner and another occupant of the Dodge were asked to get out of the vehicle, and were guarded by Ritchey and Warden. In conducting a pre-impounding inventory of the Dodge, the officers had occasion to open the trunk of the vehicle. Two large bags of shrimp were discovered therein. Recalling their earlier investigation of a burglary where some shrimp had been stolen, the officers placed the petitioner and the other vehicle occupant under arrest for burglary and auto theft. At this point, and as relevant to the petitioner, the following occurred:

> "Q. Was one of these Jones?
>
> A. Yes, sir, Mr. Jones. At this time, Mr. Jones became very excited and attempted to turn around as if to turn toward the project area at Fourth and Jefferson. Officers Richey and Warden, who were assisting us at the time, grabbed Mr. Jones by each arm. He struggled and I walked over to them, and I said, 'Be careful.

He's going to try to get away.' And at this time in the struggle, Mr. Jones had a small matchbox between his pants and his shirt. It was -- you know, in there, tucked in between there. This popped out of his pants and fell to the ground during the struggle. I picked up the box and opened it, and counted fourteen decks of heroin.

"Q. Now did you or any of the officers actually pull the matchbox out of him or did --

A. No, sir.

Q. You did not take it from him?

A. No, sir.

Q. And from where did you physically take the box?

A. I physically got the matchbox off the ground between his feet.

Q. And did you, after this, turn this box over to investigative at vice squad?

A. Yes, sir, they were on the scene."
(Petitioner's appendix, page 7a)

The petitioner was not arrested until the legal and uncontested pre-impounding inventory search of the fleeing vehicle revealed the presence of what the officers believed to be previously stolen shrimp. When the shrimp was discovered, the officers put all the facts together, and probable cause existed for petitioner's arrest.

In Brinegar v. United States, 338 U.S. 160, 93 L.Ed. 1879, 69 S.Ct. 1302 (1949), this Court discussed probable cause:

> "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.
>
> 'The substance of all the definitions' of probable cause 'is a reasonable ground for belief of guilt.' McCarthy v. De Armit, 99 Pa 63, 69, quoted with approval in the Carroll opinion. 267 US at 161, 69 L ed 554, 45 S Ct 280, 39 ALR 790. And this 'means less than evidence which would justify condemnation' or conviction, as

Marshall, Ch. J., said for the Court more than a century ago in Locke v. United States, 7 Cranch (US) 339, 348, 3 L ed 364, 367. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge, and of which they had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed. Carroll v. United States, 267 US 132, 162, 69 L ed 543, 555, 45 S Ct 280, 39 ALR 790.

"These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts

> leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave lawabiding citizens at the mercy of the officers' whim or caprice." Brinegar, supra, at pages 175-176.

Thus, contrary to petitioner's assertion that his arrest was based on suspicion and racial prejudice, when the facts, as known to the officers, are measured in light of the standards expounded in Brinegar, supra, it is clear that his arrest was based on probable cause, and was lawful.

Once the lawful arrest of petitioner had been effectuated, it would have been permissible to conduct a full search of the petitioner's person as an incident to that lawful arrest. Gustafson v. Florida, 42 U.S.L.W. 4068 (U.S. Dec. 11, 1973), and United States v. Robinson, 42 U.S.L.W. 4055 (U.S. Dec. 11, 1973). However, in the instant case such a search did not occur. When advised of his arrest, the petitioner became very excited, and attempted to take his leave from the scene.

A struggle ensued between the petitioner and the arresting officers, who were trying to maintain custody. During the struggle, a small matchbox, which had been tucked between the petitioner's pants and shirt, popped out and fell to the ground. Officer Stelma retrieved the matchbox, opened it, and heroin was found therein.

In summary, the warrantless arrest of the petitioner was lawful, being grounded on facts and circumstances within the arresting officers' knowledge establishing probable cause. No search of petitioner was required to discover the matchbox of heroin which had been concealed upon his person. The seizure of the matchbox of heroin, and its admission into evidence against him in a criminal proceeding, did not intrude on the petitioner's rights under the Fourth Amendment.

CONCLUSION

The judgment of the District Court of Appeal of Florida, First District, in the case sought to be reviewed is in harmony with the Fourth Amendment of the Constitution of the United States as it is plainly written and as it has been interpreted by this Honorable Court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that three copies of the foregoing Brief of Respondent have been furnished the petitioner's counsel, the Honorable Ernest D. Jackson, Sr., 410 Broad Street, Suite 208, Jacksonville, Florida, 32202, and the Honorable Releford McGriff, 1042 Broad Street, Jacksonville, Florida, 32202, via U.S. Mail, this _____day of January, 1974.

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